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Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
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# WORKING GROUP ON INDIGENOUS POPULATIONS

## A permanent forum in the United Nations for indigenous people

## Information received from Governments and indigenous organizations

### Introduction

1. The General Assembly in its resolution 48/163 of 21 December 1993 requested the Commission on Human Rights to give priority consideration to the establishment of a permanent forum for indigenous people within the United Nations system. In its resolution 1994/28 of 4 March 1994, the Commission on Human Rights requested the Assistant Secretary-General for Human Rights to invite Governments and indigenous organizations to express their views on this question, and to transmit to the Working Group on Indigenous Populations contributions received, together with a technical note addressing institutional issues.

2. The technical note of the secretariat is contained in document E/CN.4/Sub.2/AC.4/1994/11. The present addendum contains the contributions received from Governments and indigenous organizations as at 14 June 1994. Any other communications will be contained in further addenda to the secretariat note.

GE.94-13191 (E)

## MAURITIUS

[17 June 1994]
[Original: English]

The Government of Mauritius is agreeable to the establishment of a permanent forum in the United Nations for indigenous people with the proviso that it should not jeopardize the rights of immigrants but be used to promote harmony and peaceful coexistence.

## UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[16 June 1994]
[Original: English]

1. The United Kingdom recognizes the importance of the rights of indigenous people, which was reaffirmed by the proclamation by the General Assembly of the International Decade of the World's Indigenous People, beginning on 10 December 1994. However, the United Kingdom wonders whether there may be a risk of according a disproportionate priority to the subject within the United Nations human rights system. The creation of a decade, the existence and work of the Working Group on Indigenous Populations, and the mention of indigenous people in a wide range of recent resolutions passed by the United Nations General Assembly and the Commission on Human Rights are all important steps. Whether there is a further need for a permanent forum for indigenous people at this stage is a question requiring careful consideration.

2. The United Kingdom would wish to have a clearer idea of the role and objectives of such a "permanent forum". However it seems to us that, if "permanent fora" are to be created, other areas of concern in the human rights field have at least an equal claim. Many countries, including the United Kingdom, do not have an indigenous population to suffer from discrimination. There are many other forms of discrimination, such as that on racial or religious grounds, or against persons with disabilities, which are at least as severe as that against indigenous people. The United Kingdom would want to be sure that all the ways of addressing the problems faced by indigenous people at a national or regional level had been fully explored. It would also want the "forum" to have clear objectives, which could not be achieved by other means, for example, through continuing the work of the existing Working Group on Indigenous Populations. If a new forum were created, the United Kingdom would hope that it would exist instead of, rather than in parallel with, the existing Working Group, for reasons both of financial cost and of unnecessary duplication of work.

3. The United Kingdom notes that Commission on Human Rights resolution 1994/26 already requests the Assistant Secretary-General to establish a unit within the Centre for Human Rights to support its activities related to indigenous people and in particular to plan, coordinate and implement activities for the Decade of the World's Indigenous People. The United Kingdom considers that a decision on any more permanent forum to continue work after the Decade would be premature, and sees no need for the creation of a separate "forum" in parallel with this unit.

4. The United Kingdom is also concerned by the financial implications of the creation of a "forum", at a time when resources for human rights are already inadequate to allow the Centre for Human Rights to carry out effectively all its existing mandates. It would hope to have a clear idea of the cost implications of any such decision, which would of course depend on the forum's mandate and objectives.

## ABORIGINAL AND TORRES STRAIT ISLANDER SOCIAL JUSTICE COMMISSIONER, AUSTRALIA

[24 June 1994]
[Original: English]

### A. Future role of the Working Group

1. The completion by the Working Group on Indigenous Populations of the draft declaration on the rights of indigenous peoples does not mean that it no longer has a role to play in promoting the rights of indigenous peoples.

Advantages

The Working Group is the only forum in the United Nations solely dedicated to the consideration of indigenous peoples' issues;

It is highly accessible to direct participation by indigenous peoples, without regard to consultative status;

Its composition has allowed its members to remain independent of Governments;

It has gained a genuine understanding of the aspirations, as well as the diversity of indigenous peoples and become a repository of considerable expertise in relation to indigenous peoples' rights;

It may have a role to play in contributing to the passage of the draft declaration through the United Nations system, and contributing to the development of further international standards relating to the rights of indigenous peoples.

Disadvantages

The Working Group's status as a working group of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities does not constitute adequate acknowledgement by the United Nations system of the unique historical experiences and distinct identities of indigenous peoples;

In relation to the review of developments, the reports of the Working Group have not sought to provide rigorous analysis of, or concrete conclusions and recommendations in respect of material received by the Working Group;

In relation to standard-setting, the Working Group is likely to be able to exert only limited influence on the text to be adopted by the General Assembly and its role in relation to the implementation of the Assembly's declaration remains to be determined;

It has no explicit fact-finding powers and no procedures for the handling of communications.

2. Two basic options have been proposed for the future role of the Working Group:

(i) That the United Nations strengthen it as a permanent institution to monitor and ensure the fulfilment of the rights of indigenous peoples (proposed in the B'okob Declaration of the First World Summit of Indigenous Peoples, 27 May 1993);

(ii) That it continue its efforts to promote the rights of indigenous peoples for the medium term and be replaced in time by a new permanent forum within the United Nations system.

3. It may be that, in addition to the creation of any new permanent forum for indigenous peoples, consideration should be given to the retention of the Working Group as a permanent forum in its own right.

4. If, for the medium term at least, the Working Group is to remain the only forum for indigenous peoples within the United Nations system, possibilities for maximizing the potential of its mandate must be explored.

Review of developments

5. The review of developments must contribute in a meaningful and measurable way to improving the situation of indigenous peoples. It is suggested that the Working Group:

(i) Convene its meetings and undertake consultations in regions in which indigenous peoples live;

(ii) Continue to receive information from indigenous peoples and Governments on progress at the national level towards:

(a) Giving effect to the provisions of the draft declaration;

(b) Negotiating arrangements to give effect to the right of indigenous peoples to self-determination;

(c) Establishing procedures for the resolution of disputes between indigenous peoples and States;

(iii) Work with indigenous peoples, specialized agencies and other United Nations bodies to:

(a) Establish a statistical database;

(b) Produce an annual thematic report on the world's indigenous peoples as a United Nations sales item;

(c) Elaborate a medium-term programme of activities, including seminars, conferences, research projects and studies, as well as financial and technical assistance to indigenous peoples and communities;

(iv) Propose guidelines for, coordinate and evaluate the activities of agencies and bodies within the United Nations system affecting indigenous peoples.

6. In order to enhance the review of developments, it is suggested that the Working Group call on the Economic and Social Council and the General Assembly to adopt resolutions:

(i) Enabling it to receive communications from indigenous individuals and peoples concerning violations of their rights;

(ii) Reviewing the mandate of the Voluntary Fund for Indigenous Populations to enable indigenous peoples to attend meetings of specialized agencies and bodies within the United Nations when matters of concern to indigenous peoples are being considered and to negotiate activities and projects of relevance to them.

Standard-setting

7. In order to continue to contribute effectively to the evolution of standards, it is suggested that the Working Group:

(i) Undertake regional consultations on the draft declaration to increase indigenous peoples' awareness of their rights and to ensure indigenous input in the process towards adoption;

(ii) Make its expertise available to its parent bodies in their consideration of the draft declaration;

(iii) Contribute to the elaboration of other draft international instruments and guidelines in areas of concern to indigenous peoples;

(iv) Promote and contribute to regional standard-setting activities.

8. It is suggested that the Working Group call on the Economic and Social Council and the General Assembly to adopt a resolution recognizing the competence of indigenous peoples and their organizations to participate in all specialized agencies and bodies within the United Nations system when matters of concern to them are under consideration and, in particular, to participate fully and effectively at all stages of consideration of the draft declaration.

## B. A permanent forum for indigenous peoples

9. There is widespread consensus amongst indigenous peoples that an important goal of the International Decade must be the creation of a permanent space for indigenous peoples within the United Nations system. Whilst it is too soon to be discussing particular outcomes, consensus is emerging in relation to the following:

(i) The permanent forum must have a role in:

(a) Ensuring full participation of indigenous peoples in international decision-making affecting them;

(b) Supervising the implementation of indigenous peoples' rights, including those contained in the draft declaration;

(c) Enforcing treaties and other agreements with States;

(d) Resolving disputes and providing remedies for violations of indigenous peoples' rights;

(e) Coordinating activities across the United Nations system on the basis of full consultation and collaboration with indigenous peoples;

(ii) The permanent forum must have transparent, flexible and user-friendly procedures;

(iii) The composition of the forum must incorporate elements independent of States and/or the membership of indigenous peoples.

### Proposed models

10. In their consideration of the proposed permanent forum, indigenous peoples have referred to various models. Whilst none can provide a blueprint for an indigenous peoples' forum, each incorporates a number of interesting features.

#### 1. Expert committee

##### Composition

Independent experts, including indigenous experts, competent in the field of indigenous peoples' rights.

##### Status

Expert committee reporting to the General Assembly or the Economic and Social Council.

Functions

Examination of States' reports on progress towards the realization of indigenous peoples' rights;

Receipt of communications concerning specific violations of the rights of indigenous peoples and the provision of remedies;

Conciliation of more wide-ranging disputes between indigenous peoples and States;

Fact-finding visits to the territories of indigenous peoples;

Publication of an annual report containing decisions pursuant to the communications procedure, analysis of States' reports and information sought and received from other sources, and general comments and recommendations on progress towards the realization of indigenous peoples' rights.

2. Trusteeship Council model

11. The status of the Trusteeship Council as one of the five principal organs of the United Nations signifies the importance which was attached to the development of the peoples of trust territories towards self-government or independence. The establishment of an indigenous peoples' council as a new principal organ of the United Nations, or the reconstitution of the Trusteeship Council, would require amendment of the Charter of the United Nations pursuant to the procedure under Chapter XVIII.

Composition

Members of the United Nations and the representatives of indigenous peoples.

Status

Principal organ reporting to the General Assembly.

Functions

Dispatch of missions to the territories of indigenous peoples;

Dispatch of detailed questionnaires seeking information on political, economic, social and cultural developments affecting indigenous peoples;

Receipt of oral and written petitions from indigenous peoples on progress towards the realization of self-determination and on matters affecting the enjoyment of their rights;

Preparation of reports on the situation of indigenous peoples and submission thereof, together with recommendations, to the General Assembly.

3. Commission on Sustainable Development model

12. In 1992, at its forty-seventh session, the General Assembly adopted a resolution establishing a high-level Commission on Sustainable Development (CSD). The idea for that Commission arose out of the fourth session of the Preparatory Committee for the United Nations Conference on Environment and Development (UNCED). During UNCED, Governments agreed to establish the Commission as a functional commission of the Economic and Social Council to enhance cooperation for the integration of environment and development issues and to examine progress in the implementation of Agenda 21.

13. The establishment of a permanent forum for indigenous peoples as a functional commission of the Economic and Social Council would recognize that indigenous peoples' issues extend in many respects beyond the sectoral framework of human rights. An appropriate institutional response to the complexity of environment and development problems facing indigenous peoples could require the creation of an institutional space in which there is an integrated approach to the environmental and developmental and other economical and social aspects of indigenous peoples' rights, as well as a long-term, cross-sectoral approach to implementation.

Composition

A functional commission consisting either of Governments and indigenous peoples' representatives or of experts in the area of indigenous peoples' rights. Although the Commission on Sustainable Development model provides for expert participation in an advisory and not a decision-making capacity, there is no a priori reason preventing the creation of a functional commission consisting of experts. Following the League of Nations experience, it was originally envisaged that all functional commissions of the Economic and Social Council would be composed of experts;

A high-level advisory board consisting of eminent persons with relevant expertise to provide expert advice on the realization of indigenous peoples' rights and on other matters dealt with by the commission;

A secretariat unit.

Status

Functional commission of the Economic and Social Council.

Functions

Elaboration of a multi-year programme of work, supported by inter-sessional technical working groups and/or special rapporteurs;

Examination of progress in the realization of indigenous peoples' rights in accordance with guidelines on State reporting, requiring discussion of both sectoral and cross-sectoral issues and drawing on the assistance of a range of specialized agencies and United Nations bodies, as well as scientific and other non-governmental constituencies;

Promotion of scientific research, the development of composite indicators and the elaboration of protocols and guidelines;

Receipt of communications from indigenous individuals and peoples, with the ability to activate an emergency mechanism to take action to protect the rights of indigenous peoples in crisis situations.

Further matters for consideration

(a) United Nations office for indigenous peoples

14. For the medium term at least, the Working Group and the Centre for Human Rights have a central role to play in advancing the rights of indigenous peoples within the United Nation system. The Working Group is the focal point for consideration of future United Nations activities in relation to indigenous peoples and is an important vehicle for supervising the progress of the draft declaration. The Centre for Human Rights has onerous responsibilities in relation to the International Decade and in providing continuous liaison between indigenous peoples and United Nations programmes and agencies.

15. A United Nations office of indigenous peoples must be established to provide secretariat services in support of these activities. This office must be adequately resourced, it must be advised by indigenous experts and permanent indigenous staff must be appointed to it. Until the question of a permanent forum is resolved, the office of indigenous peoples may best be located in the Centre for Human Rights.

(b) United Nations high commissioner for indigenous peoples

16. As a medium-term measure, indigenous peoples might also consider the creation of the post of high commissioner for indigenous peoples. A United Nations official at the level of Under-Secretary-General, the high commissioner could seek to ensure that indigenous peoples' issues receive adequate policy prominence and resource endowment within the United Nations system. High-level indigenous experts could be responsible for the High Commissioner's activities in the different regions in which indigenous peoples live.

17. The High Commissioner's activities could include supervision of the United Nations office of indigenous peoples, provision of advisory services and technical and financial assistance to indigenous peoples, dialogue with Governments with a view to securing respect for indigenous peoples' rights and coordination of activities within the United Nations system in relation to indigenous peoples. At least pending the General Assembly's adoption of the

draft declaration and the establishment of permanent implementation machinery, the high commissioner could be given the capacity to act rapidly in response to emergencies.

18. It should be noted that the B'okob Declaration records the resolution of the First Summit of Indigenous Peoples to create a high commissioner for indigenous peoples.

(c) Specialized agencies and indigenous peoples

19. Within the framework of the International Decade, the specialized agencies and related United Nations bodies must develop comprehensive and adequately funded programmes to address the development needs of indigenous peoples. These programmes must emphasize the improvement of economic and social infrastructure in indigenous communities and the enhancement of self-reliance.

20. To ensure maximum control by indigenous peoples of the development process, advisory services and technical and other development assistance must be provided directly to indigenous communities and organizations. Agencies should appoint indigenous experts to determine priority areas for, and acceptable parameters of international assistance. To ensure a coordinated, system-wide response to the International Decade, an inter-agency committee on indigenous peoples should be established.

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